



POLICE DEPARTMENT

May 10, 2010

MEMORANDUM FOR: Police Commissioner

Re: Detective Frank Agostini
Tax Registry No. 917210
Brooklyn Child Abuse Squad
Disciplinary Case No. 85296/09

The above-named member of the Department appeared before me on January 27, 2010, charged with the following:

1. Said Detective Frank Agostini, assigned to the Brooklyn Child Abuse Squad, while on duty on or about December 20, 2007, did wrongfully and without just cause utilize a Department computer to make an inquiry of an individual, a personal acquaintance, and said inquiry was unrelated to the official business of the Department.

P.G. 219-14, Page 1, Paragraph 2 – DEPARTMENT COMPUTER SYSTEMS

2. Said Detective Frank Agostini, assigned as indicated in Specification #1, on or about December 20, 2007 and February 20, 2008, did knowingly associate with a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities.

P.G. 203-10, Page 1, Paragraph 2(c) – PROHIBITED CONDUCT

The Department was represented by Amy Avila, Esq., Department Advocate's Office, and the Respondent was represented by Peter Brill, Esq.

The Respondent, through his counsel, entered a plea of Guilty to one of the subject charges and a plea of Not Guilty to the remaining charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

COURTESY • PROFESSIONALISM • RESPECT

DECISION

The Respondent, having pleaded Guilty, is found Guilty of Specification No. 1.

The Respondent is found Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on the dates delineated in these charges, the Respondent resided in an apartment in a building owned by the parents of Angel Garcia.

The Department's Case

The Department called Sergeant Jay Roman as a witness.

Sergeant Jay Roman

Sergeant Jay Roman, a 15-year member of the service who is assigned to Internal Affairs Bureau (IAB) Group 34, testified that in March, 2008, he was assigned to investigate a complaint lodged by Ms. Seanne Garcia, Angel Garcia's wife, that the Respondent was engaged in misconduct regarding his relationship with Garcia.

Roman obtained Garcia's arrest record which indicated that Garcia had been arrested three times resulting in pleas of guilty to violations; two to Harassment in the Second Degree and one to Disorderly Conduct. He then obtained Certificates of Disposition for these convictions (DX 1, 2 and 3). One of these arrests included a charge of possessing a forged New York City Police Department parking plaque. Investigators were unable to trace the origin of this forged plaque.

A computer check revealed that the Respondent had, on December 20, 2007, used a Department computer to make an inquiry for a personal reason unrelated to the official business of the Department. He used the FINEST system to access New York State Department of Motor Vehicle (DMV) records and he ran Garcia's name to ascertain whether DMV had suspended Garcia's driver's license.

Roman conducted an official Department interview of the Respondent. When Roman asked the Respondent if he knew that Garcia had been arrested, the Respondent admitted that he was aware of one arrest but that he believed that these charges had been dismissed. When Roman asked the Respondent why he had run Garcia's name to ascertain whether DMV had suspended Garcia's driver's license, the Respondent stated that he had done this because Garcia "makes his living with his license and he wanted to make sure the license was in order."

On cross-examination, Roman confirmed that the original allegation for which the Respondent was being investigated was that the Respondent was involved in criminal activities with Garcia but this allegation was not substantiated. Roman also confirmed that all three of Garcia's convictions were for offenses constituting violations and that he had no convictions for crimes.

The Respondent's Case

The Respondent testified in his own behalf.

The Respondent

The Respondent testified that although he and Angel Garcia were childhood friends they have not socialized during the last ten years and he has not asked Garcia about his personal affairs.

With regard to Specification No. 1, the Respondent admitted that while he was on duty on December 20, 2007, at the Brooklyn Child Abuse Squad, he used a Department computer to make an inquiry for a personal reason unrelated to the official business of the Department by running Garcia's name to ascertain whether DMV had suspended Garcia's driver's license. He did this because Garcia makes his living as a "private livery" driver and Garcia had expressed concern about his license. The Respondent recalled that he told Garcia, "I will see if your license is good so you don't get in trouble driving." The DMV inquiry indicated that Garcia's driver's license was still valid. When the Respondent was asked if he had informed Garcia that his driver's license was still valid, the Respondent answered, "I believe I told his mother."

With regard to Specification No. 2, the Respondent testified sometime between the date he ran Garcia's license and February, 2008, while he was off duty inside his apartment, police officers knocked on the front door of the building. He recalled that he came downstairs from his apartment, opened the door and identified himself to the officers as a member of the service. There was a sergeant, a female officer and six to eight other officers at the door. The female officer stated that she was assigned to "DV" (Domestic Violence) duties at the 75 Precinct and that he was "looking for Angel Garcia." The officers "didn't go into exactly what it was about." The Respondent told the officers that Garcia did not live there and the officers left. The Respondent

approached Garcia's parents, told them why the officers had come to their building, and "advised" them that it was in Garcia's "best interest to surrender at the precinct." The Respondent testified that Garcia's parents asked him if he knew an attorney who could represent their son. The Respondent replied, "Yes," and provided Garcia's parents with the name of an attorney. The Respondent testified that he never sought to learn the disposition of Garcia's criminal case but that Garcia's mother told him that the case was "dismissed, done with."

On cross-examination, when the Respondent was asked whether he and Garcia were close friends during 2008, the Respondent answered that he and Garcia were still "friendly" but that they did not "hang out" with each other, although he had met Garcia's wife. When the Respondent was asked whether he had telephoned Garcia to inform him that police officers from the 75 Precinct had come to his parent's building looking for him, the Respondent answered, "I don't remember."

The Respondent was then confronted with answers he gave to questions posed to him at his official Department interview in which he stated that he had told Garcia directly that his driver's license was still valid and that he had also personally called Garcia to tell him that police officers from the 75 Precinct were looking for him and that he should surrender at the precinct. When the Respondent was asked whether he had ever asked Garcia why officers from the 75 Precinct were looking for him, the Respondent answered that he never asked Garcia any questions about this because it was "none of my business." The Respondent also testified that Garcia had never told him that he had been arrested for possessing a forged Department parking plaque. The parties stipulated that when the Respondent was asked at his official Department interview

whether he was aware that Garcia had been arrested previous to his February, 2008 arrest, the Respondent had replied, "Um, fighting, woman."

When the Respondent was asked whether the attorney he had recommended to Garcia's parents was retained to represent Garcia on his criminal case, the Respondent answered, "I believe so."

FINDINGS & ANALYSIS

Specification No. 1

The Respondent, having pleaded Guilty, is found Guilty of Specification No. 1.

Specification No. 2

It is charged that the Respondent knowingly associated with a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities.

I find the Respondent guilty based on his testimony at this trial and based on the responses he gave to questions posed to him at his official Department interview.

When the Respondent was asked by Roman at his official Department interview whether he was aware that Garcia had been arrested prior to the day when police officers came to his residence, the Respondent replied, "Um, fighting, woman." Thus, the Respondent acknowledged at his official Department interview that he was aware that Garcia had an arrest record.

Also, the Respondent admitted that he was alerted by the police officers who he spoke to at his residence that they were seeking to arrest Garcia. The Respondent sought to downplay the significance of this by arguing that, since one of the officers had stated

that she was assigned to Domestic Violence duties at the 75 Precinct, he concluded that the complaint for which the officers were seeking to arrest Garcia involved a minor domestic matter and that this conclusion was a reasonable one since Garcia's case was, in fact, later transferred to a Domestic Violence Part (DX 1). However, since at the time he spoke to the officers the Respondent admittedly did not know what Garcia was alleged to have done or what crime the officers were seeking to arrest Garcia for, for all that the Respondent knew at that point, Garcia could have committed a serious felony offense.¹

The Respondent acknowledged that he never asked the officers who appeared at his residence what crime Garcia was alleged to have committed and that, even though he told Garcia about the officers' visit to his parent's building, he never asked him either because "it was none of my business." It was the Respondent's business as a police officer to insure that he was not associating with a person who had engaged in criminal activity.

Based on the above, the Respondent was on notice that Garcia was a person who had likely engaged in criminal activity. As a result, the Respondent was clearly required to distance himself from Garcia by avoiding all direct and indirect contact with him and especially by avoiding involving himself in any aspect of Garcia's pending criminal matter. However, at his official Department interview the Respondent admitted that he had called Garcia and alerted him to the fact that 75 Precinct officers were looking for him and, in his testimony at this trial, he further admitted that he had provided Garcia's parents with the name of an attorney who could (and the Respondent believes did) represent Garcia on his criminal case. By taking these actions, the Respondent violated

¹ In fact, one of the charges Garcia was arraigned on, Criminal Contempt in the First Degree, Penal Law section 215.51 (DX 1), is a Class E Felony.

the Patrol Guide prohibition on knowingly associating with a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities.

The Respondent is found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on July 18, 1996. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

By pleading guilty to Specification No. 1, the Respondent admitted that he knowingly violated the prohibition on utilizing a Department computer to make an inquiry for a personal reason unrelated to the official business of the Department. This is not the first time that the Respondent has been found guilty of improperly utilizing a Department computer to make an inquiry for a personal purpose (see attached Confidential Memorandum).

Under Specification No. 2, the Respondent has been found Guilty of knowingly associating with Garcia, a person who the Respondent had reason to believe had engaged in criminal activities.

The Assistant Department Advocate recommended that the Respondent be required to forfeit 25 vacation days as a penalty.

Consistent with the doctrine of progressive discipline (see attached Confidential Memorandum) it is recommended that the Respondent be required to forfeit 30 vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED
JUL 20 2011
RAYMOND S. KELLY
POLICE COMMISSIONER



POLICE DEPARTMENT
CITY OF NEW YORK

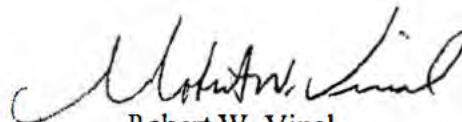
From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE FRANK AGOSTINI
TAX REGISTRY NO. 917210
DISCIPLINARY CASE NO. 85296/09

The Respondent received an overall rating of 4.0 on his 2008 annual performance evaluation, 3.5 on his 2007 annual evaluation and 3.5 on his 2006 evaluation. He has been awarded two Excellent Police Duty medals. [REDACTED]
[REDACTED]

He has a prior formal disciplinary record. In 2000, he forfeited 20 vacation days after he pleaded guilty to operating a motor vehicle for three months during 1999 which was unregistered, uninsured and uninspected. In 2008, he forfeited 20 vacation days after he was found guilty after trial of preventing an individual from closing a door by putting his foot inside the doorway after he had become involved in a verbal dispute with this individual; and wrongfully requesting another member of the service to make an inquiry in the FINEST system which was not related to the official business of the department.

On January 23, 2009, he was placed in Level - II Disciplinary Monitoring based on "Serious Misconduct."

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials